S. HRG. 101-1047

NOMINATIONS—FTC

HEARING

BEFORE THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

SECOND SESSION

ON

ROSCOE B. STAREK, III, TO BE A COMMISSIONER, FEDERAL TRADE COMMISSION

OCTOBER 9, 1990

Printed for the use of the
Committee on Commerce, Science, and Transportation

U.S. GOVERNMENT PRINTING OFFICE

35-634 O WASHINGTON : 1990

For sale by the Superintendent of Documents, Congressional Sales Office
U.S. Government Printing Office, Washington, DC 20402

S261-20

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ERNEST F. HOLLINGS, South Carolina, *Chairman*

DANIEL K. INOUYE, Hawaii
WENDELL H. FORD, Kentucky
J. JAMES EXON, Nebraska
ALBERT GORE, JR., Tennessee
JOHN D. ROCKEFELLER IV, West Virginia
LLOYD BENTSEN, Texas
JOHN F. KERRY, Massachusetts
JOHN B. BREAUX, Louisiana
RICHARD H. BRYAN, Nevada
CHARLES S. ROBB, Virginia

JOHN C. DANFORTH, Missouri
BOB PACKWOOD, Oregon
LARRY PRESSLER, South Dakota
TED STEVENS, Alaska
ROBERT W. KASTEN, JR., Wisconsin
JOHN MCCAIN, Arizona
CONRAD BURNS, Montana
SLADE GORTON, Washington
TRENT LOTT, Mississippi

KEVIN G. CURTIN, *Chief Counsel and Staff Director*
WALTER B. MCCORMICK, JR., *Minority Chief Counsel and Staff Director*

CONTENTS

	Page
Opening statement by Senator Bryan	1
Opening statement by Senator Kasten	3
Opening statement by Senator Pressler	4

LIST OF WITNESSES

Starek, Roscoe B., III	12
Biographical sketch	3
Prehearing questions of the Majority and the answers	8
Dixon, Hon. Alan J., U.S. Senator from Illinois, statement	2
Michel, Hon. Robert H., U.S. Representative from Illinois, letter	18

NOMINATION—FTC

TUESDAY, OCTOBER 9, 1990

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The committee met, pursuant to notice, at 9:40 a.m., in room SR-253, Russell Senate Office Building, Hon. Richard H. Bryan presiding.

Staff members assigned to this hearing: Moses Boyd, staff counsel; Becky Kojm, professionals staff member; and Ruth Johnson, minority professional staff member.

OPENING STATEMENT BY SENATOR BRYAN

Senator BRYAN. It is a pleasure for me to welcome all of you this morning to the hearing on the nomination of Roscoe B. Starek, to serve as a Commissioner on the Federal Trade Commission.

As everyone knows, the FTC has a broad responsibility that can be generally stated as overseeing the marketplace. The Congress has provided this authority to the Commission to ensure the operation of a fair and competitive free market system and to ensure that consumers are protected from unfair or deceptive acts or practices.

The role of the FTC is vital to both the consumer and to the business community. Indeed, our marketplace has expanded from a traditional, domestic market into an active, international market system. We now must be aware of not only commercial activities within our own country's borders, but also commercial operations having global impact around the world.

We, therefore, must have individuals appointed to the FTC who are committed to its mission and purpose and to the vigorous enforcement of its laws. I am certain that Mr. Starek is aware of both the tremendous task and exciting challenge that face him if he is confirmed.

I look forward to his testimony and discussing these issues with him this morning.

It is now my pleasure to yield to the ranking member of the full committee, the Senator from Missouri, Mr. Danforth.

Senator DANFORTH. Mr. Chairman, thank you very much. I do not have a prepared statement.

I am very pleased that this is a nomination which we will be dealing with before the Congress adjourns. Mr. Starek is a person who certainly has the confidence of the President and the administration.

Mr. Starek, I welcome you to the committee.

Senator BRYAN. Thank you.
Senator Dixon?

STATEMENT OF HON. ALAN J. DIXON, U.S. SENATOR FROM ILLINOIS

Senator DIXON. Thank you, Mr. Chairman. I am delighted to be here this morning with you and my distinguished friend from across the river in our part of the world.

I am pleased to be here today to recommend your favorable consideration of Roscoe Burton Starek, III, as a Commissioner of the Federal Trade Commission.

Ross has previously served with a number of former and current members of the Illinois congressional delegation who are warm friends of mine, including former Senator Chuck Percy, who was my senior Senator when I came to the United States Senate; former Congressman Robert McClory, who served with me, Mr. Chairman, and Senator Danforth, in the Illinois House of Representatives and in the Illinois State Senate for a total of 20 years; Representative George O'Brien; and Representative Tom Railsback; as well as Congressman Henry Hyde.

All have nothing but praise for Ross's talents, capabilities and achievements. His variety of expertise, I believe, will serve him well as a Commissioner of the Federal Trade Commission.

The Federal Trade Commission, as you know, plays a vital role in the regulation of American commerce. It requires someone attuned to the needs of manufacturers, distributors and shippers alike, and it requires an ability to understand and balance a variety of forces while advancing the Federal Government's interests in trade matters.

Mr. Chairman and Senator Danforth, I believe Mr. Starek's impressive record, dating back to the Ford administration, gives him the needed depth of experience necessary for this position, and I am proud to present this fellow Illinoisan before you and recommend your swift approval of him as a Commissioner of the Federal Trade Commission.

I thank you both for your kindness.

Senator BRYAN. Senator, we thank you very much for your appearance here this morning on behalf of our nominee. I know you have some other commitments this morning. So whenever you feel that you have to excuse yourself, that will be understood by all of us.

Thank you very much for your comments.

Senator DIXON. Thank you.

[The statement and questions and answers follow:]

ERNEST F. HOLLINGS, SOUTH CAROLINA, CHAIRMAN
DANIEL K. INOUYE, HAWAII
WENDELL H. FORD, KENTUCKY
J. JAMES EXON, NEBRASKA
ALBERT GORE, JR., TENNESSEE
JOHN D. ROCKEFELLER IV, WEST VIRGINIA
LLOYD BENTSEN, TEXAS
JOHN F. KERRY, MASSACHUSETTS
JOHN B. BREAUX, LOUISIANA
RICHARD H. BRYAN, NEVADA
CHARLES S. ROBB, VIRGINIA
JOHN C. DANFORTH, MISSOURI
BOB PACKWOOD, OREGON
LARRY PRESSLER, SOUTH DAKOTA
TED STEVENS, ALASKA
ROBERT W. KASTEN, JR., WISCONSIN
JOHN McCAIN, ARIZONA
CONRAD BURNS, MONTANA
SLADE GORTON, WASHINGTON
TRENT LOTT, MISSISSIPPI
KEVIN G. CURTIN, CHIEF COUNSEL AND STAFF DIRECTOR
WALTER B. McCORMICK, JR., MINORITY CHIEF COUNSEL AND STAFF DIRECTOR

United States Senate
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION
WASHINGTON, DC 20510-6125

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

(If more space is needed, please use attached REMARKS sheet)

A. BIOGRAPHICAL DATA

1. Name: Starek (Last) Roscoe (First) Burton III (Other)

   Address: 3605 Orlando Place (Current residence) 145 Old Executive Office Building (Business)

   Alexandria, VA 22305 Washington, D.C. 20500

2. Position to which nominated: Commissioner, Federal Trade Commission Date of nomination: September 21, 1990

3. Date of birth: November (month) 17 (day) 1947 (year) Place of birth: Minneapolis, MN

4. Marital status: Married Full name of Spouse: Mildred Harllee Starek

5. Names and ages of children: Elizabeth Wollaston (born August 26, 1990)

6. Education:

Institution	Dates attended	Degrees received	Dates of degrees
American University	9/70-6/73 9/65-1/66	J.D.	5/73
Syracuse University	9/66-6/69	A.B.	6/69
Wisconsin State University	1/66-6/66	-	-
Arlington High School	9/61-6/65	Diploma	6/65

7. **Employment Record: List all positions held since college, including the title or description of job, name of employer, location of work, and dates of inclusive employment.**

From	To	Name of Employer	Address	Type of Work
1/89	Present	The White House	145 OEOB Wash., D.C. 20500	Deputy Asst. to the President and Deputy Director of Presidential Personnel
11/88	1/89	Presidential Transition Team (reimbursable detail from Dept. of State)	1825 Connecticut Ave., N.W. Wash., D.C. 20008	Deputy Director of Presidential Personnel
9/86	11/88	Department of State	2201 C St., N.W. Wash. D.C. 20520	Deputy Asst. Secretary for Policy and Counterterrorism, Bureau of Diplomatic Security
2/85	9/86	Department of State	2201 C St., N.W. Wash., D.C. 20520	Legislative Counsel to the Undersecretary for Management
2/84	2/85	Department of State	2201 C St., N.W. Wash., D.C. 20520	Deputy Chief Negotiator for Transportation and Telecommunications, Bureau of Economic and Business Affairs
1/82	2/84	Department of State	2201 C St., N.W. Wash., D.C. 20520	Special Asst. to the Under Secretary for Management for White House Liaison

7. **Employment Record (cont'd):**

From	To	Name of Employer	Address	Type of Work
5/79	1/82	Select Committee on Narcotics Abuse and Control U.S. House of Representatives	234 House Annex 2 Wash., D.C. 20515	Chief Minority Counsel
3/76	5/79	Committee on the Judiciary, U.S. House of Reps.	B-351C Rayburn House Office Bldg. Wash., D.C. 20515	Associate (Minority) Counsel
7/75	3/76	Select Committee on Intelligence U.S. House of Reps.	Rayburn House Office Bldg. Wash., D.C. 20515	Counsel
1/75	7/75	Presidential Clemency Board The White House	3rd Fl., New Executive Office Bldg., Wash., D.C. 20520	Asst. General Counsel
1/74	10/74	Impeachment Inquiry Committee on the Judiciary, U.S. House of Reps.	2nd Fl., House Annex 1, Wash., D.C. 20515	Counsel
1/73	7/73	Committee on Government Operations U.S. Senate	Russell Senate Office Bldg. Wash., D.C. 20510	Minority Professional Staff Member
3/72	1/73	Hon. Charles Percy U.S. Senate	Dirksen Senate Office Bldg. Wash., D.C. 20510	Legislative Assistant (part-time)

8. **Government Experience:** **List any experience in or direct association with Federal, State, or local governments including any advisory, consultative, honorary or other part-time service or positions.**

See Number 7 above.

2b

9. Political affiliations activities: **List all memberships and offices held in or financial contributions and services rendered to all political parties or election committees during the last 10 years.**

Memberships and Services Rendered

1972-Present	The Republican Party	Member
3/80-11/80	Lawyers for Reagan-Bush	Volunteer
7/80-11/80	Reagan-Bush Congressional Criminal Justice Tas Force	Volunteer

Contributions

6/90	Martin for Senate	$ 50.00
4/90	Republican Party of Virginia (spouse)	$ 25.00
2/90	Ray Briscuso for Congress	$100.00
1/90	Republican Party of Virginia (spouse)	$ 25.00
8/89	Coleman for Governor	$ 50.00
5/89	Republican Party of Virginia (spouse)	$ 25.00
10/88	"Bush Watch" - Republican National Committee (spouse)	$ 25.00
2/85	Rusher for County Commissioner	$ 75.00
9/84	National Federation of Republican Women	$ 15.00
10/81	Coleman for Governor	$ 50.00
5/81	Young Americans for Freedom Roast	$ 50.00
4/80-11/80	Lawyers for Reagan-Bush	Volunteer
7/80-11/80	Reagan-Bush Congressional Criminal Justice Task Force	Volunteer

3

10. Memberships: **List all memberships and offices held in professional, fraternal, scholarly, civic, charitable, and other organizations.**

Member	Illinois Bar Association	1973-Present
Member	District of Columbia Bar Association	1976-Present
Member	The Federalist Society	1988-Present
Member	The Capitol Hill Club	1977-Present
Member	The Pisces Club	1977-1989
Summer Membership	The Metropolitan Club of Washington	6/90-8/90
Member	The American Judicature Society	1976-1983
Member	Phi Kappa Psi Fraternity President of NY Beta Chapter	1966-Present 1968-1969
Member	National Geographic Society	1981-Present

11. Honors and awards: **List all scholarships, fellowships, honorary degrees, honorary society memberships, and any other special recognitions for outstanding service or achievement.**

Superior Honor Award, U.S. Department of State, 1986

12. Published writings: **List the titles, publishers and dates of books, articles, reports, or other published materials you have written.**

None

RESPONSES TO PRE-HEARING QUESTIONS
BY ROSCOE B. STAREK, III
NOMINEE FOR COMMISSIONER
FEDERAL TRADE COMMISSION

1. IN YOUR BIOGRAPHICAL DATA, YOU INDICATED THAT YOU HAVE HAD CONSIDERABLE EXPERIENCE IN THE AREA OF LAW ENFORCEMENT.

(A) WHAT IS YOUR IMPRESSION OF THE JOB THAT THE FTC HAS BEEN DOING IN RECENT YEARS REGARDING ANTITRUST ENFORCEMENT?

It is my impression that, under the leadership of Chairman Steiger, the Commission properly has been vigorous in the enforcement of the antitrust laws. I understand that the antitrust bar, the States and the public have expressed confidence in the Commission's efforts to enforce the laws. On numerous occasions, the Chairman and other Commissioners have publicly stated that the Commission should portray an image of a "cop on the beat". Based on my experience with law enforcement issues, an agency which is perceived as doing its job by the public will generate improved compliance with the law.

(B) IN WHAT, IF ANY, AREAS OF ENFORCEMENT DO YOU BELIEVE THE FTC NEEDS TO CONCENTRATE MORE ATTENTION AND RESOURCES?

From what I have learned about the ongoing enforcement activities of the FTC, the Commission's resources are stretched to the limit in order to address its broad jurisdiction. Since the Commission's merger enforcement must receive top priority because of the strict time deadlines in the Hart-Scott-Rodino Act, non-merger enforcement may have received less attention due to past reductions in resources.

The ABA's Kirkpatrick II Report noted that the Commission has a special role in non-merger enforcement activities because of its jurisdiction under Section 5 of the FTC Act, particularly in the areas of single-firm conduct and collusive activities that do not rise to the level of price-fixing. Because these areas are developing, I cannot speculate on where they will lead us, but I am willing to explore them to determine whether enforcement action in these areas would be economically sound and benefit consumers.

2. **AS YOU KNOW, THE ENFORCEMENT OF ANTITRUST LAW IS CURRENTLY DIVIDED BETWEEN THE FTC AND THE JUSTICE DEPARTMENT. WHAT IS YOUR EVALUATION OF THIS DIVIDED RESPONSIBILITY -- IS IT EFFICIENT, AND DOES IT WORK? ARE THERE WAYS IN WHICH IT COULD BE IMPROVED?**

Although the idea of sharing antitrust jurisdiction between the FTC and the DOJ has been questioned, I have not heard of problems relating to this division of enforcement responsibilities. My impression is that the liaison between the FTC and the Antitrust Division is operating more smoothly than it has for several years. Indeed, because each agency has special areas of authority or expertise, both organizations have been able to develop particular knowledge of certain industries or practices. For example, the criminal enforcement of the Sherman Act is done entirely by the DOJ, while the enforcement of Robinson-Patman Act violations are traditionally within the jurisdiction of the FTC.

Of course, if I learned as a Commissioner that there were substantive or procedural problems with the relationship between the two agencies, I would work with my fellow Commissioners, the Department of Justice and the Congress to direct the enforcement effort in the most effective manner possible.

3. **AS YOU ARE AWARE, THE FTC IS FREQUENTLY REQUIRED TO COORDINATE ACTIVITIES WITH STATE OFFICIALS, PARTICULARLY STATE ATTORNEYS GENERAL, IN THE ENFORCEMENT AND PURSUIT OF ANTITRUST ACTIVITIES. HOWEVER, DURING THE 1980'S, COMMUNICATIONS BETWEEN THE FTC AND STATE OFFICIALS BECAME SOMEWHAT STRAINED. DO YOU HAVE SUGGESTIONS FOR HOW THAT RELATIONSHIP MIGHT BE IMPROVED OR MADE MORE EFFECTIVE?**

Good working relations bewteen the FTC and state antitrust enforcement officials, particularly the Attorneys General, are essential to achieving the most effective enforcement program for American consumers. As you know, Chairman Steiger and the other Commissioners have emphasized that coordination with the states is a very important goal. State-federal cooperation is useful for sharing information -- to the extent allowed by law, avoiding duplicative efforts and working towards a consistent national antitrust policy. I understand that the Executive Working Groups, which consist of representatives of the FTC, DOJ and the states, have been a useful forum. I support the ongoing efforts of the Commission to work with the states and appreciate the efforts of the states in providing the Commission with specific information and pointing the Commission to problems that need investigation. We should continue to work towards defining complementary and rational goals in law enforcement in order to prevent duplication of effort and needlessly conflicting approaches to common problems.

4. AS YOU MAY KNOW, THERE HAVE BEEN CLAIMS BY SOME AMERICAN BUSINESSES THAT FOREIGN BUSINESSES ARE ALLOWED TO ENGAGE IN ACTIVITIES IN THEIR HOME COUNTRIES THAT WOULD BE PROHIBITED UNDER AMERICAN ANTITRUST LAW, AND THAT THESE ACTIVITIES ADVERSELY IMPACT ON THE ABILITY OF AMERICAN BUSINESSES TO COMPETE. AT THE REQUEST OF THE COMMERCE COMMITTEE, THE FTC IS CONDUCTING AN INVESTIGATION OF THE JAPANESE KIERETSU, PARTICULARLY AS IT RELATES TO THE AUTOPARTS INDUSTRY. DO YOU BELIEVE THE FTC SHOULD PLAY A ROLE IN INTERNATIONAL ANTITRUST ENFORCEMENT? IF SO, DO YOU BELIEVE THE FTC CURRENTLY HAS SUFFICIENT AUTHORITY TO ACT EFFECTIVELY IN THIS CASE?

Because international competition is increasingly significant in markets across the globe, the FTC should and does play a role in international antitrust enforcement.

Whether the FTC has sufficient authority to act effectively in the international antitrust arena is an important question that I will be able to address only after some further study and, if I am confirmed, some experience with the process. I am not aware of any major international matter that the Commission could not pursue because of limitations on its authority. I understand that the staff may encounter difficulties or delays in obtaining relevant information from international actors, but continued cooperation with foreign countries may help minimize those problems. If I find shortcomings or deficiencies in the ability of the Commission to pursue international antitrust enforcement, I will make appropriate suggestions for potential changes in the current statutes.

5. SOME ARGUE THAT U.S. ANTITRUST LAW PLACES UNNECESSARY BURDENS ON THE ABILITY OF U.S. FIRMS TO COMPETE.

(A) WHAT ARE YOUR VIEWS ON THIS ISSUE?

Antitrust enforcement necessarily places some burdens on businesses, just as citizens are "burdened" by the legal restrictions against thieving and unsafe driving. One example is the statuatory requirement that large mergers be reported in advance to the Justice Department and the FTC. However, business generally recognizes that enforcing the antitrust laws leads to a level playing field where unfair competition is not allowed. Therefore, business has generally encouraged such government activity.

I am not aware of businesses significantly altering otherwise procompetitive behavior for fear of the antitrust laws. If I am confirmed and thereafter conclude that there are unnecessary burdens being placed on businesses, I would work with my fellow Commissioners to address those concerns.

(B) WOULD YOU SUPPORT ANY MODIFICATION OF CURRENT ANTITRUST LAW TO STRENGTHEN THE ABILITY OF AMERICAN BUSINESSES TO COMPETE? IF SO, WHAT MODIFICATIONS WOULD YOU SUGGEST?

I believe the current antitrust laws for the most part offer sufficient flexibility to allow for efficient and vigorous competition. An important element of enforcing the antitrust laws is articulating what those laws require, and I support efforts by the Commission to explain the parameters of the antitrust laws and the reasons behind its decisions.

There has been dialogue over the years about the effectiveness and scope of the antitrust laws in terms of international enforcement and, if confirmed, I look forward to participating in the continued learning about competitive market activity. If I become convinced that changes in the current laws or enforcement standards are warranted, I would work towards that end with my fellow Commissioners and others in the antitrust community.

6. **AS YOU KNOW, ONE OF THE RESPONSIBILITIES OF THE FTC IS TO SUPERVISE MERGERS BY MAJOR CORPORATIONS. WHAT IS YOUR GENERAL PHILOSOPHY ON MERGERS? AT WHAT POINT, IN YOUR OPINION, DO MERGERS BECOME HARMFUL TO CONSUMERS AND FAIR COMPETITION IN THE MARKET PLACE?**

As the DOJ Merger Guidelines and FTC Statement on merger enforcement recognize, many mergers are efficient and procompetitive. There are, however, some mergers which may harm consumers by permitting a dominant firm or facilitating collusion and thus lead to higher than competitive price levels. Predicting which mergers will be anticompetitive is a difficult task and requires careful analysis of specific facts and the application of sound economic theory and appropriate legal precedent to those facts.

Both sets of guidelines, which are very important for conveying the agency's enforcement intentions, provide a useful mechanism from which to start an evaluation of which mergers are likely to have anticompetitive effects. My understanding is that by and large the merger guidelines have worked well, although continued refinement and explication of them may be necessary.

7. **AS YOU KNOW, DURING THE ERA OF THE REAGAN ADMINISTRATION, THERE WAS STRONG SUPPORT FOR DEREGULATION. AS A RESULT, REGULATION OF MANY INDUSTRIES WAS GREATLY RELAXED. WHAT IS YOUR GENERAL PHILOSOPHY ON THE PROPRIETY OF GOVERNMENT REGULATION OF BUSINESS?**

I have enormous respect for the power of the free market and believe that competition best protects consumers and allows for the efficient conduct of business. Nevertheless, enforcement agencies such as the FTC have an important role in ensuring that the free market operates properly. When there is unfair competition that harms consumers or interferes with the ability of businesses to compete on a level playing field, or there is other conduct that injures consumers, then government agencies are bound to enforce vigorously the laws Congress has enacted.

Senator BRYAN. Mr. Starek.

STATEMENT OF ROSCOE B. STAREK, III

Mr. STAREK. Thank you very much, Mr. Chairman.

Before I do go on, I would especially like to thank my senior Senator from Illinois, Alan Dixon, for taking the time from his busy schedule to introduce me to the Committee this morning and for his very kind remarks.

Thank you very much, Mr. Chairman and Senator Danforth. I very much appreciate your opening remarks and I look forward to discussing my nomination to be a Commissioner of the Federal Trade Commission.

I am particularly grateful that you are holding this hearing this morning in light of the late hour in which the Senate was in session last night.

Two members of my family have joined me this morning, my wife, Millie, and our daughter, Elizabeth, who is 6 weeks old today.

Senator BRYAN. For the record, we are delighted to have the nominee's family. If there is anyone in the hearing room this morning who did not observe the ceremony beforehand, if I might, Mr. Starek, I would please ask your wife and daughter to stand again. I don't think there is anyone who missed seeing them, but we are delighted to have them here today.

For the record, this may be the youngest advocate on behalf of a nomination that at least this Chairman has seen in this committee room. We are delighted that you have your family with you to join today in this important event in your own life.

Senator DANFORTH. I notice, Mr. Chairman, that Senator Dixon appears to have a hankering to kiss that baby with the photographer around.

Senator BRYAN. We would, if we might, ask the nominee to suspend for a moment. We are delighted to be joined by the senior Senator from Illinois, Alan Dixon, who specifically requested that he be allowed to be a part of this proceeding this morning.

We are delighted to have him here this morning and we will yield to him for any comments that he would like to make about our nominee.

Mr. STAREK. I do not have a formal opening statement, but I would like to make a few introductory remarks.

Mr. Chairman, Senator Danforth, I am honored that President Bush has nominated me for this position and that the committee has scheduled a hearing on my nomination so rapidly.

I have great faith in the power of our free market economic system and understand that my primary responsibilities, if I am confirmed to be a Commissioner, will be to protect both consumers and business from abuses of that free market system and to vigorously enforce the laws whose jurisdiction the Congress has accorded to the Federal Trade Commission.

Much of my service, Mr. Chairman, in the Federal Government has been law enforcement related. Those entrusted with the authority and responsibility to enforce our laws must do so with fairness and prudence. But, where wrongdoing is evident, enforcement must be steadfast and vigorous.

Mr. Chairman, from what I have observed, the Federal Trade Commission, under the leadership of Chairman Steiger, is operating efficiently and effectively and is carrying out its congressional mandate. If I am confirmed, I can assure you that I will join with the Chairman, the other Commissioners and the staff and work diligently to enforce the laws and protect consumers. I would be honored to have the opportunity to join such a distinguished and collegial body.

I can also promise, if I am confirmed, that I will work closely with this committee and with the other committees of Congress that have an interest in the Federal Trade Commission. As a former, long-time Capitol Hill staff member, who has had the privilege to work in both Houses of Congress, I have a clear understanding of the oversight role of the Congress and the responsibility of a Commissioner to develop a productive dialogue with the Congress.

Thank you, Mr. Chairman.

I am pleased to respond to any questions which you and Senator Danforth may have.

Senator BRYAN. Thank you very much, Mr. Starek. We appreciate your comments.

I would just say, parenthetically, that I enjoyed the opportunity that I had personally to visit with you the other day in my office. As Senator Dixon has observed, you do, indeed, have an impressive record of public service that commends you to this committee.

I have a question initially. I am not one who believes that those who embark upon a career of public service, as you have, takes with it a pledge or vow of poverty. You have a stock portfolio that you have made public here in terms of the documents that accompany your nomination, and at least one question arises as to how you believe you would handle a situation.

You have stock in an oil company, and there have been numerous requests by Members of the Congress on both sides of the political aisle that raise a question about the conduct of the oil companies, particularly in light of the Iraqi invasion of Kuwait on August 2. I don't ask you for your position in terms of whether you think that conduct was fair or reasonable or, indeed, whether you find any violation. But at least one of the allegations has been that, indeed, the conduct of the oil companies, coming as quickly as it did, in running the price up, in some instances within hours after the invasion itself, suggests that there may have been—and I underscore the word "may"—that there may have been some kind of concerted action on behalf of the oil companies which would seemingly, if true—underscore the word "if"—constitute a violation of the antitrust laws.

You have stock, and I don't recall any activity with respect to that particular company. But my question would be if such a request came to the Commission and you were called upon to conduct, together with your fellow Commissioners, an investigation, or to direct one through the staff level, what do you believe is the appropriate way of handling that in light of the fact that you have an interest in such a company?

I in no way intend to impugn your integrity or honesty, but the appearances, as all of us in Congress know today, oftentimes make it very difficult for the actions of those in public life or who are

members of public agencies which have a regulatory function to have the kind of credibility that I know you would want in any kind of decision of a Commission that you are part of and which we in the Congress would expect.

Can you share with us your thoughts?

Mr. STAREK. I would be happy to, Mr. Chairman.

I think you have hit on a very important point here. I am concerned about the common stocks that I hold, and I can tell you and promise to this committee that before any action or any activity came before the Commission in which I would have to make some sort of review or judgment, I would meet with the Commission's designated agency ethics official, who is an assistant general counsel at the Commission, to make sure that I would be in absolutely no conflict and that I would not give the appearance of any conflict of interest. I would listen to his advice as to what would be the appropriate action I could take.

For example, if he recommended a recusal on a particular issue then I would most likely recuse myself. If he recommended I sell a particular stock, I would do it. If he recommended to buy mutual funds that were highly diversified and sell my holdings in common stocks, then that would be the course I would take.

I have no problem with that whatsoever because the last thing I want to do is give the appearance that I would have a conflict of interest in my work as a Commissioner.

Senator BRYAN. I emphasize, Mr. Starek, that I in no way intend to malign you personally or to question your integrity. But I think that is a reasonable question.

Let me ask you just one thing further. I think that it is certainly appropriate for you to get the proper ethical advice and counsel if you feel there were a circumstance which raised a question of financial holdings or prior relationships with any organization or individuals that might be brought before the Commission for any kind of consideration, in terms of action.

With respect to your disclosure or your request for guidance, do you feel that you would have to make that public? That is to say let's assume, hypothetically, that some financial interest that you may have raised the question in your own mind. As you've indicated, you have followed the internal procedures, and let's assume, for the sake of argument, that responding to the advice that you were given, you were told that, look, there is, indeed, no conflict, Mr. Starek, and you are free to sit on, free to participate in, you do not have "a conflict of interest or the appearance of one." You render, together with your Commissioners, a decision. It is hypothetically favorable to the interest which originally raised the question. And, again, I am assuming an absolutely honest decision on your part. Thereafter your interest becomes public and controversy attaches to it. That is something that I don't think is terribly hypothetical and farfetched.

Again, I don't take the approach that one has to come into these positions stripped of any earthly belongings in order to serve honestly in public life.

But would you make a public disclosure prior to following the advice in this instance that, yes, there was no conflict, you may proceed? What do you think your approach would be?

Mr. STAREK. I would have no problem with a public disclosure prior to any consideration of an issue or a matter before the Commission. I am not that versed in the ethics laws, so I am not sure what is required or whether this is purely voluntary. But that is something which sounds to me to be appropriate and something I would be happy to do prior to any consideration. As I said earlier, the last thing I want to do is give the appearance of any potential conflict of interest.

Senator BRYAN. And I do appreciate that.

One area that has been of particular interest to me on this Committee because we have had a particular problem in my own State is that of telemarketing fraud. You have an impressive background with law enforcement. This committee has processed legislation, with bipartisan support, and Senator McCain was one of the principal architects of the legislation. As you know, he serves on this committee.

My question to you is what are your thoughts in terms of the Federal role interfacing with the State role in terms of telemarketing fraud? I would just set for you the background that these boiler room operations, by their very nature, have a migratory existence. They are here today in location X with a minimal amount of effort and with a time, in terms of movement, that would impress us all, they are able to move across state lines. So it is very difficult. The National Association of Attorneys General has certainly requested the ability to do various things that, prior to the tenure of the present Chairman, created some tension. But, to her credit, I think the relationship is much improved. But it would give the Federal Government the ability to act and to undertake certain actions on behalf of citizens and consumers, and would give the power to the attorneys general to do so in a different forum than they are presently able to do.

Do you have any thoughts on that, Mr. Starek?

Mr. STAREK. Yes, I do, Senator.

I am not totally familiar with your bill. I have not read the new compromise version that you and Senator McCain have introduced. However, I do know that the Commission has endorsed the objectives of that bill. The Commission supports a number of provisions in that bill and I support generally anything that is going to give the Commission or the States the increased ability and the tools necessary to stop fraud.

Consumer fraud is a crime. It is a particularly dastardly crime against the elderly in our society. Any legislation which would provide the Commission with the tools to put an end to telemarketing fraud or any other kind of consumer fraud I would be inclined to support.

Senator BRYAN. I appreciate that answer.

You are quite correct; the Commission has supported the objective of the legislation. The areas of conflict deal, to some extent, I suppose, with the definition of telemarketing fraud. The legislation creates a cause of action that can be filed in Federal court and it gives the attorneys general of the States the power to file without getting permission from the Commission itself.

The attorneys general, in a bipartisan fashion, have come in and have requested that authority and I think, frankly, that it is appro-

priate. So I would appreciate your openmindedness in approaching that.

Finally, just one other area of interest do I want to pursue with you before yielding to Senator Danforth.

It is pretty clear that the marketplace that you are dealing with is not confined by the 48 contiguous States and Alaska and Hawaii. It is a global marketplace out there. This is a very affluent target for international goods all over the world. I think we are finally, in this country, recognizing that, as big as our market is, we had better make sure that we develop markets overseas as well. I think that is as it should be.

But I have been concerned and I think a number of Members of Congress have been concerned about actions undertaken in which the policy and the elements of the strategy are put together, not within the confines of the United States, but whose operating entities, whose penetration into the marketplace clearly impact the conduct of the marketplace. Indeed, it has been argued by many that those actions, although taking place offshore, have a profound and dramatic impact on the marketplace in this country.

I must say that I happen to share that view.

My question arises: what is your own view of the scope of the antitrust laws, such as they are, to, in effect, address that kind of conduct or activity, assuming, for the sake of argument, that it would, if undertaken within the 50 States, constitute a violation of the antitrust laws, but in this instance it occurred, at least in its inception and at least the implementation of the plan and its genesis, offshore, but clearly impacting the marketplace in this country and our own domestic manufacturers and suppliers. Do you have any thoughts on that?

Mr. STAREK. Yes, I do, Senator. That is a very good question.

My thought is that the current antitrust laws do, in fact, pertain to the global economy. As you noted, the market is worldwide for many of our goods and services. I think that the antitrust laws do reach to the kind of activity you cited in your question.

I know that there are some problems. I know that the staff has certain problems with service, and other jurisdictional problems in reaching foreign companies. But, as far as I understand, those laws certainly would apply to the scenario you laid out.

Senator BRYAN. I am very pleased, obviously, to hear your answer. I understand that there are some practical or mechanical difficulties, if you will. I would just hope that, when you are confirmed, and it is my view that you are going to be—I intend to make such a recommendation—that you are aggressive. You have had some tremendous experience as a member of the staff here on the Hill. You know of its importance and made reference to it in your opening comments.

I would just encourage that kind of communication with the Congress on both sides of the political aisle. This does not have to be partisan, in my view, and ought not to be. I want to assure you that this committee wants to work with you and wishes you every success in your undertaking.

It is now my pleasure to yield to Senator Danforth.

Mr. STAREK. I thank you very much, Senator. You can be assured, as I noted in my opening remarks, that I feel very comforta-

ble in working with the Congress. I understand your role and I look forward to a long and fruitful dialogue with you, sir.

Senator DANFORTH. Thirty years from now, when Elizabeth is telling your grandchildren what you accomplished on the FTC, what do you hope she will tell them?

Mr. STAREK. Senator, I hope she will tell them that, first of all, I had honorable and credible service to my country; secondly, that I was able to make a contribution in several areas. One of the two areas of particular interest to me is consumer fraud. As I said before, it is an insidious problem and needs to be stamped out. It is something that I intend to concentrate on.

Secondly, I hope that she can tell her children that I performed my law enforcement responsibilities well. In other words, when the laws were broken, I was able to enforce the laws and punish those who broke the laws. I think that is the principal role of the Federal Trade Commission, that is, to enforce the laws that the Congress has enacted.

Thirdly, I think that I would like her to say that I was able to help consumers, whether they be the victims of fraud or whether they be the victims of price fixing or price gouging; activities that violate our antitrust laws.

Senator DANFORTH. I might say that both Senator Bryan and I have served as State attorneys general. When I was an attorney general—and I'm sure this is the case now—the FTC made a special effort to have a very close relationship with State attorneys general. Somebody once asked what is an attorney general. An attorney general is someone who is waiting for an opening. State attorneys general are people who are politically on the make and anxious to do exciting and interesting stuff, and particularly anxious to crack down on consumer fraud.

Since that is what you say is your area of concentration, the thing that you would most like to do, do you see an effort on your part, on the Commission's part, to cooperate with the State attorneys general to try to bring them in on the act and maybe give them an opportunity to be effective enforcers of consumer protection laws within their own States?

Mr. STAREK. Absolutely. I would be extremely open to that.

I think that, under the leadership of Chairman Steiger, the Commission has improved its relationship with the State attorneys general ten-fold.

It is my understanding that the executive working groups that have been set up on both consumer protection and antitrust with the attorneys general are going quite well and that the relationship, which at times over the past few years has been hostile, is not hostile now.

I would welcome the opportunity to work with those prosecutors. It seems to me the more people we have concentrated on problems, like consumer fraud, the better it is. The more people, the more resources—and resources are limited now, both for States and for the Federal Government—the more people and resources devoted to putting an end to consumer fraud or any other violations of consumers' rights, the better.

Senator DANFORTH. Mr. Starek, I want to express my appreciation for your commitment to public service. It is a commitment which has really extended over all of your adult life. I think that the President has been fortunate to have your service and I think the FTC and the American people are going to be fortunate to have your service as well.

I join with Chairman Bryan in hoping that we will be able to act on this literally within days, so that you can begin your work.

Mr. STAREK. Thank you very much, Senator. I appreciate those kind remarks.

I would like to reiterate my appreciation to both of you for attending this morning after such a late night last night in the Senate.

Senator BRYAN. We dare not have come this morning if we had not done what we did last night.

Mr. STAREK. I did think about that over the weekend, Senator.

Senator BRYAN. The committee hearing will stand adjourned.

Thank you.

[Whereupon, at 10:07 a.m., the committee adjourned, to reconvene upon the call of the Chair.]

[The following information was subsequently received for the record:]

OFFICE OF THE REPUBLICAN LEADER,
U.S. HOUSE OF REPRESENTATIVES,
Washington, DC, October 4, 1990.

Hon. ERNEST F. HOLLINGS,
Chairman, Committee on Commerce, Science and Transportation,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: I was pleased to learn of President Bush's recent nomination of Roscoe B. Starek, III, to be Commissioner of the Federal Trade Commission. I am writing to endorse the nomination and to urge the Committee to act favorably.

Over the past eighteen years, Ross Starek has been an exemplary public servant in both the Legislative and Executive Branches of our government. In the early 1970's, he worked on the U.S. Senate staff with your former colleague, Chuck Percy. For almost eight years he worked on our side of Capitol Hill as a counsel to three committees in the House. During that period he worked for three of my colleagues from Illinois—Bob McClory, Tom Railsback and Henry Hyde—all of whom have the highest regard and praise for his legal and analytical skills and his ability to work in a collegial atmosphere. After leaving the House staff in 1982, Mr. Starek served with distinction for seven years at the U.S. Department of State. Since President Bush's inauguration, he has served as a senior member of the White House staff.

In short, Mr. Starek is very well-qualified and equipped to serve on the Commission. I endorse and support wholeheartedly his candidacy and recommend this capable lawyer for Commissioner of the Federal Trade Commission.

Sincerely,

ROBERT H. MICHEL,
Republican Leader.

○